IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6107 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMRELI NAGAR PALIKA

Versus

DISTRICT EMPLOYMENT OFFICER

Appearance:

MR SURESH M SHAH for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/07/2000

ORAL JUDGEMENT

1. The petitioners are Chief Officer, President and Vice President of Amreli Municipality. They have filed this petition challenging the impugned orders contained in annexures "A" and "B" to the writ petition.

2. The brief facts are that several posts were vacant in the Amreli Municipaltiy. There were daily wager employees working with the Municipality since long. The Municipality felt the need for confirming all those daily wagers on permanent posts keeping in view their longstanding services. It was, therefore, resolved by the General Body of the Municipality to give permanent posting to such employees, and thus, 9 such employees were posted on permanent basis in different categories under different orders. One such order was passed in December, 1987, 4 in January, 1988, one in May, 1988, one in January, 1989 and two in June, 1989. These persons started to work as permanent employees of the Municipality. It is alleged that at the behest of respondent No.1, the respondent No.3 wrote a letter on 28.4.1989 to the Assistant Collector, Amreli to look into the matter of orders of appointment issued aforesaid in favour of 9 employees. A report was made on 29.6.1989 to the respondent No.3 in the matter and then on the basis of the said report at the instance of the respondent No.3, the respondent No.2--the Collector of Amreli issued a show cause notice on 11.7.1989 upon the petitioner-Municipality, its President and Vice President under Section 258 of the Municipalities Act. The respondent No.2, after proceeding under Section 258 of the Act passed an order on 30.4.1990 holding that the 9 appointments given by the Municipality were illegal and caused financial loss to the Municipality. Enquiry under Section 70 of the Act was recommended against the President and the Vice President of the Municipality. Appointments given to all the 9 persons were cancelled. This order is contained in Annexure "A". Finding that the order--Annexure "A" was wholly illegal, the petitioners preferred an appeal under a valid resolution passed by the Municipality authorising them to prefer an appeal. Appeal under Section 258(3) of the Act lies to the State Government against the order of the Collector, and such appeal is to be preferred to the State Government within 30 days from the date on which the copy of the order is received. It is informed that the respondent No.3--The Director of Municipalities has been delegated the power of Appellate Authority by the State Government under section 258(3). In the absence of the counsel for the petitioners, the respondent No.3 on 31.1.1991 dismissed the appeal holding that it was not an appeal preferred by the Municipality in view of Section 5 of the Act. Consequently, on this technical ground, the appeal of the petitioners was dismissed. This order is contained in annexure "B". It is these two orders in annexures "A" and "B" which are challenged. A prayer is

made for quashing and setting aside these two orders.

3. Having examined the petition and noting that no counter-affidavit has been filed by the respondents, though the writ petition was admitted on 12.12.1991, it is felt that the order-Annexure "B" is too technical and can not be sustained in the eyes of law for the following reasons:

4. In the first place, Section 5 of the Act provides that "in every municipal borough there shall be a municipality, and every such municipality shall be a body corporate by the name of the Municipality and shall have perpetual succession and a common seal, and may sue and be sued in its corporate name through its Chief Officer." Thus, if the municipality has to sue it has to sue through its Chief Officer. Relying upon this section, the Appellate Authority-respondent No.3 has dismissed the appeal on a mere technical ground little realising that the order-annexure"A" was not passed in the name of body corporate, namely, Amreli Municipality through its Chief Officer. On the other hand, annexure"A", one of the impugned orders was passed against the three petitioners. Secondly, if appeal was to be preferred these three petitioners should have come forward to prefer appeal, and if the name of the municipality was not mentioned in the memo of appeal, no illegality was committed. Normally, appeal is to be filed by the persons aggrieved by the order under Section 258 of the Act. It is, however, mentioned in the petition vide para 5 that resolution was passed by the municipality authorising the petitioners to file appeal, and then the appeal was filed. Thus, the appeal was competent and it was filed under a valid resolution of the municipality. Under the circumstances, since no order was passed against the municipality, but against the three petitioners, the municipality had no option but to authorise the petitioners to file appeal, and if they filed appeal, it shall be deemed that it was filed by the body corporate, namely, Amreli Municipality, and it could not be rejected on a technical ground that it was not appeal, strictly in compliance of the provisions of Section 5 of the Act. It may be mentioned that 9 persons were given appointment on permanent posts. They were originally working as daily wagers. Since they were working as daily wagers since long, appointments were given to those persons between 1987-89. One person was appointed in 1987, 5 in 1988 and 3 in 1989. Interim order was passed by this court on 12.12.1991. Shri M.S.Shah, Learned Counsel for the petitioners informed that the 9 employees are still working on permanent posts and they have not been

terminated or dismissed from service.

5. It is contended by Shri Shah that it is yet to be scrutinised and examined on merits whether the impugned order at annexure "A" could be passed by the respondent No.2 in exercise of powers under section 258 of the Act, and since this exercise was not undertaken by the respondent No.3, it is just and expedient that the order-annexure"B" be quashed and set aside and the respondent No.3 be directed to decide the appeal of the petitioners on merits, and the petitioners may be permitted to raise before the appellate authority-the respondent No.3 all contentions challenging the impugned order-annexure "A" passed by the Collector-respondent No.2. This contention is acceptable on the facts and circumstances of the case.

6. For the reasons stated above, the writ petition is partly allowed. Impugned order-annexure"B", dated 31.1.1991 passed by the respondent No.3 is set aside. The respondent No.3 is directed to hear the appeal of the petitioners on merits, and the petitioners are permitted to challenge the other impugned order-annexure "A" passed by the respondent No.2 before the Appellate Authority-the respondent No.3. No order as to costs.

7. It is clarified that during the pendency of the appeal before the respondent No.3, the status and employment of the 9 employees working on permanent posts under interim order of this court shall not be disturbed, and enquiry under Section 70 of the Act shall likewise not proceed till the appeal is finally decided.

18.7.2000 (D.C.SRIVASTAVA,J)